

### REMARKS

Claims 75, 78-86 and 88-96 are pending in the present application. Claims 76, 77 and 87 have been canceled. Claims 1-74 were previously canceled. Claims 75, 80, 86, 88, 89 and 92 have been amended, and claims 93-96 have been added. Support for the claim amendments may be found throughout the specification, such as lines 24-30 on page 11 and lines 1-16 on page 12, for example.

Applicant appreciates the time and attention afforded by Examiner Dinh during a telephonic interview on September 12, 2006 in which the Applicant's representative and the Examiner discussed the proper status of the current Office Action dated July 20, 2006 ("Office Action"). In particular, the Applicant's representative noted that boxes 2a and 2b of the Official Action Summary were checked, thereby indicating that the Office Action was both a final and a non-final action. The Examiner stated that the Office Action is properly a non-final action.

Claims 75-78, 81 and 92 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,032,716 ("Lam") in view of U.S. Patent No. 6,250,001 ("Gillespie"). Claim 79 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lam in view of Gillespie and in further view of U.S. Patent No. 5,793,281 ("Long"). Claims 80 and 83-90 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lam and Gillespie in view of Long and in further view of U.S. Patent No. 5,966,696 ("Giraud"). Claim 92 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lam and Gillespie in view of Long and Giraud and in further view of U.S. Patent No. 6,762,734 ("Blotky").

#### **35 U.S.C. § 103(a) - Obviousness**

Claims 76, 77 and 87 have been canceled, thereby obviating the rejections with respect to these claims. As amended, independent claim 75 recites, in part, a system for advertising comprising a touch-activated sensor for disposing proximally to the product, such that the sensor can be selectively actuated by a consumer based on the consumer's interest in the product.

In contrast, Lam describes an audio message delivery device 10 adapted to be mounted on a shelving unit 12 (Lam at col. 2, ll. 48-52). An audio message delivery device 10 includes a processing means 34, an audio signal generating means 36 and a light sensing means 21, which monitors ambient light reflected off the interior of the shelving unit 12 (*Id.* at col. 3, ll. 15-21). The light sensing means 21 may comprise a photosensor 22 (*Id.* at col. 4, ll. 26-27). When a prospective customer moves to within a few feet from the device 10, a shadow cast by the prospective customer decreases the ambient light within the field of view of the photosensor 22 (*Id.* at col. 7, ll. 23-29). As a result, a trigger signal is generated, thereby causing the audio signal generating means 36 to convert data output signals from the processing means 34 into an audio message which can be heard by the customer (*Id.* at col. 7, ll. 29-41). Thus, by simply moving within a predetermined distance of the device 10, the customer automatically receives the audio message regardless of whether the customer wants to hear it. This may detract from the customer's shopping experience and cause the customer to become irritated. Furthermore, this problem may be further exacerbated if the device 10 is positioned at multiple locations along a shelf, for example, thereby causing the customer to receive numerous messages simultaneously, or in continuous succession as the customer walks down an aisle of a store.

Accordingly, Applicant respectfully submits that Lam does not disclose, teach, or suggest a system comprising a touch-activated sensor for disposing proximally to a product such that the sensor can be selectively actuated by a consumer based on the consumer's interest in the product, as recited in independent claim 75. This is beneficial because, in contrast to Lam, it delivers advertising upon an active choice by the consumer to receive the advertising information and prevents the consumer from receiving unsolicited advertising.

Gillespie describes an advertising apparatus having members 431A, 431B, 433, 441 and 461 that are adapted to fit in a cavity 329 of a floor mat 321 (Gillespie at col. 2, ll. 50-51). Members 431A, 431B, 433, 441 and 461 comprise a lower holding layer, an upper holding layer, a flexible layer, flexible transparent layer, and an advertising layer, respectively (*Id.* at col. 2, ll. 52-62). Thus, Gillespie does not disclose a sensor at all, much less a touch-activated sensor for disposing proximally to a product.

Applicant further submits that Long does not supply the missing teachings of Lam and Gillespie. More specifically, Long describes sensors 14, 16a, 16b, which can be

microwave sensors, floor mats, and/or active or passive infrared sensing devices (Long. at col. 2, ll. 41-47). Sensors 14, 16a, 16b are mounted on or near a door 12 and, upon detecting approaching traffic, provide signals to a message delivery device 22 and a door controller 18 (*Id.* at col. 2, ll. 38-65; FIG. 1). In response to the received signals from sensors 14, 16a, 16b, the message delivery device 22 delivers audio messages via a loudspeaker 32 and the door controller 18 opens and closes the door 12 via a motor 20 (*Id.* at col. 2, ll. 50-65; col. 3, ll. 13-15). Thus, in order to enter a store through the door 12, a consumer must trigger one or more sensors 14, 16a, 16b, thereby automatically causing the message delivery device 22 to provide audio messages to the consumer regardless of whether the consumer wants to hear the messages. Accordingly, Long does not disclose, teach, or suggest a touch-activated sensor for disposing proximally to a product such that the sensor can be selectively actuated by a consumer based on the consumer's interest in the product.

#### **Lack of Motivation to Combine**

Applicant respectfully submits that claims 75, 78-86 and 88-96 are patentable over the combination of Lam, Gillespie and Long for the additional reason that there is no motivation to combine the references. The mere identification in the prior art of each element of the claimed invention does not render the modification obvious unless the prior art also suggests the desirability of the combination. M.P.E.P. § 2143. When applying 35 U.S.C. § 103, “[t]he references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention.” M.P.E.P. § 2141.

Lam discloses an audio message delivery device for delivering an audio message in response to motion detected by a light sensing means (Lam at col. 1, ll. 56-68; col. 2, ll. 1-17). Lam does not contemplate or reference any other type of advertising apparatus for conveying advertising information to a consumer, such as a floor display. In addition, Lam does not contemplate or reference any other type of sensor for activating the audio message delivery device, such as a touch-activated sensor. Rather, in identifying its objective, Lam simply states, “[t]here is a need for an inexpensive, compact and energy-efficient *motion triggered audio message delivery system* to deliver point of purchase advertising to customers in supermarkets, department stores and the like” (*Id.* at col. 1, ll. 12-15) (emphasis added). The only relationship that Lam, Gillespie and Long share is the fact that, among them, one

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can find bits and pieces that, using hindsight in light of knowledge of the claimed invention, can be combined in a novel way that the Office Action contends results in the claimed invention. Accordingly, Applicant respectfully submits that there is no motivation for one skilled in the art to modify Lam with the teachings of Gillespie or Long to produce the claimed invention.

### **Conclusion**

For at least the foregoing reasons, Applicant respectfully submits that independent claim 75 patentably defines over the cited references and, therefore, is allowable. Additionally, as claims 78-86 and 88-96 depend from claim 75, Applicant further submits that the dependent claims are also allowable. Reconsideration of the application and issuance of a Notice of Allowability are respectfully requested.

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